

## **REMARKS**

This amendment is responsive to the Official Action mailed June 6, 2003, and is accompanied by a *Petition for Extension* and the required fee as well as a *Verified Statement (Declaration) of Prior Invention -- Swearing Back of Reference -- 37 C.F.R. §1.131*.

Claims 1-10 are pending. Please cancel claims 11-21 without prejudice.

In the Official Action, claims 1-10 were rejected under 35 U.S.C. §102(e) as anticipated by the disclosure of Kou (U.S. Pat. 6,363,365 B1). Claims 11-21 were rejected under 35 U.S.C. §103(a) as unpatentable over the same reference of Kou, in view of Harrington et al. (U.S. Pat. 6,161,099).

Reconsideration of claims 1-10 *as amended* is respectfully requested. In the Official Action, it is stated that Kou discloses a mechanism for secure tendering in an open electronic network wherein the bid-requesting party cannot see the content of the bid proposals until the deadline is reached, the trusted third party cannot view the content of the bid proposals, and the vendors cannot view the proposals submitted by any other vendors.

Claim 1 has been amended to recite that the buyer is allowed access to the vendor(s)'s "response" communications, including the substantive content thereof, without computer-implemented restraint thereto, and without the buyer's discretion to do being subject to the control of any other party. In consequence, only the buyer's voluntary restraint is relied upon to assure that buyer doesn't access the substantive content until some time determined from the deadline.

No new matter is added. The disclosure as filed provides full support for the foregoing amendment phraseology to claim 1. This clearly distinguishes applicant's claimed invention from both the disclosure and claims of Kou.

To pick up on that last point about Kou's claims, it is pertinent that applicant's claimed invention does not overlap with Kou's because applicant chooses to swear behind Kou, as explained more particularly below. Thus, Kou's claims 1 and 11 call for transforming the vendor's bid proposals into a form that is inaccessible by the bid requestor until the expiry of the open tendering. Kou's claim 6 requires bid proposals to be encrypted prior to submission by using an encryption key generated from a specified authentication source. Kou's claim 9 states that vendor's encryption key, utilized to encrypt the bid proposal, shall be maintained in secret from

the bid requestor until expiry of the open tendering. The remaining claims of Kou are dependent claims and incorporate all the limitations at least of their respective independent claim.

This amendment to claim 1 is supported by a meaningful commercial need and is not a sham concocted to avoid overlap with the claims of Kou. In Kou, security is paramount. Kou has the bid requesters give over all control over when they can open their bid proposals to an authentication party, who makes the decision when to allow that. In the real world of school district purchasing, for example, the following is true (at least for non-construction project sealed-bid competitions). In the paper world, the purchasing agents always received and held onto the sealed envelopes, during which time they pledged upon their own personal integrity not to open until the proper time. (In contrast, for construction projects or other extraordinarily large value competitions, the envelopes might be delivered to and entrusted with an accounting firm.) Simply put, the purchasing agents held all control over when the bid responses would be opened. Nowadays, during applicant's efforts to entice purchasing agents to switch from paper modes of purchasing to electronic modes, the purchasing agents are very reluctant to give up any of the near-total control they now hold over the process.

Accordingly, purchasing agents have pressured applicant to configure the system so that they hold comparably as much control over the process in the electronic environment as they held in the paper environment. Several reasons have been offered, the following which will serve as an example. This was told by a purchasing agent for a school district along the southern Atlantic coast. In the course of business one year, he originated a sealed-bid competition for a year's supply of plywood and other light lumber and construction materials. Also, the open tendering period was set to be relatively long, on the order of six to eight weeks. Not long after the origination date, and well before expiry of the open tendering, a weather emergency sprung up without any real advance warning. Offshore, a hurricane built up and headed directly for a landing on the coast where this school district sat.

The looming hurricane clarified two problems. One, the plywood from the sealed-bid competition would be needed immediately now to shutter up school property in order to save it:-- to wait for the expiry of open tendering would be too late. Two, the quantity of plywood needed for this emergency would be far in excess of the amounts stipulated in the bid request.

Upon reaching the foregoing conclusions himself, the purchasing agent ripped open the only bid responses he had in possession, and without serving prior notice to any of the other vendors who, as is customary, were probably waiting right until the last day before turning in their bid responses. With the information in hand of what at least the early-responding vendors would sell at, the purchasing agent got on the phone and made contracts to buy as fast as possible as much as possible from anyone who could deliver. It must be understood that, the purchasing agent at that point is in hot competition with the broader community, and enjoyed no special advantages.

What about his disregard with the rules of fair play (or formal rules of purchasing)? The purchasing agent decided to take the emergency action first and let what consequences might follow in the aftermath so follow. In truth, he believed that, when the time would come when his quick action would be weighed against breaking the rules of a sealed bid competition, things would likely tip in favor of the quick action (and things did).

In short, purchasing agents are fighting against accepting electronic purchasing if it means giving up the near-total control over the process they now hold. Applicant has been influenced by their sentiments and so provides them with comparable control over the bid opening as held before.

Claim 1 as amended also recites the buyer is provided with computer-implemented means for originating an informal message and, in addition, utilities for broadcast transmission of any such informal message, during the time period between origination of the "request for bid" communication and accessing the substantive content of any vendor's "response" communication, to every one of the plurality of vendors whose respective contact data was known or otherwise supplied to the buyer previous to the instance of the broadcast transmission.

No new matter is added. There is support for this aspect of the claimed invention extending right back to the earliest-priority provisional application, U.S. Provisional Patent Application No. 60/121,347, filed February 24, 1999. See eg., Figs. 2 and 14. The software code which generates those screens and supports the depicted-utilities is filed in full with that U.S. Provisional Patent Application No. 60/121,347.

As stipulated by the accompanying *Verified Statement (Declaration) of Prior Invention -- Swearing Back of Reference* -- 37 C.F.R. §1.131, this functionality in the software code has been

in existence since at least as early as June 30, 1998. Accordingly, this(ese) aspect(s) of the claimed invention pre-date the reference of Kou. Kou does not qualify as prior art under these circumstances. This(ese) aspect(s) further widen the separation between the claims of Kou and applicant's claimed invention.

Allowance of claim 1 is therefore appropriate and is hereby requested. The allowance of claim 1 is requested because the above-referenced aspects of the invention as defined in the claim as a whole are not disclosed or suggested by the qualified prior art of record, whether considered individually or in any routine combination.

Claims 2-10 depend from claim 1 and are allowable for the same reasons that apply to claim 1. Claims 2-10 recite further aspects of the invention, and each is patentable in its own right. These claims are allowable because they define inventive aspects that plainly distinguish the claims from the qualified prior art of record.

Every effort has been made to particularly and distinctly define the subject matter of the invention. The claims are definite, and are patentable over the prior art of record. The differences between the invention and the prior art are such that the subject matter claimed as a whole would not have been known or obvious to a person of ordinary skill in the art. Reconsideration, and allowance of all the pending claims, are respectfully requested.

Respectfully submitted,

Date: \_\_\_\_\_

Docket No. 401-8

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